



VISOKI UPRAVNI SUD REPUBLIKE HRVATSKE

HIGH ADMINISTRATIVE COURT OF THE REPUBLIC OF CROATIA

## **MECHANISMS OF COUNTERACTING CONFLICTING RULINGS FROM DIFFERENT DOMESTIC COURTS AND FROM THE CJEU AND ECtHR**

The focus of the Finnish - Swedish presidency of the ACA 2023 - 2025 will be on the vertical dialogue between the Supreme administrative jurisdictions, the Courts of the European Union and the Council of Europe in its procedural dimension. Within this framework, the seminar organized by ACA and the High Administrative Court of the Republic of Croatia, which will be held in February 2024 in Zagreb, will feature the topic of existing mechanisms of counteracting conflicting rulings from different courts at the European and domestic level. Considering the jurisdiction of the courts - members of the ACA, the submitted questionnaire refers to administrative disputes.

The questionnaire contains questions about observing and studying the case-law of the Court of Justice of the EU (hereinafter: CJEU) and the European Court of Human Rights (hereinafter: ECtHR). Questions related to the implementation of the decisions of the CJEU, its principled positions, are also raised, as well as the possibilities of counteracting conflicting final rulings from domestic courts and the CJEU.

In relation to the ECtHR, the issues primarily relate to the status and application of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: Convention) in the legal order of a particular country. Furthermore, the questions are related to the procedure in the specific administrative dispute in which the ECtHR ruling was made, but also to the application of the positions expressed in other cases, that is, to the possibility of counteracting the inconsistency of final rulings from domestic courts with the case law of the ECtHR. Questions were also raised about the status of Protocol No. 16 to the Convention and the possible role of advisory opinions in preventing conflicts between the case-law of domestic courts and the case-law of the ECtHR.

Further questions deal with the relationship of domestic courts and the domestic Constitutional Court (if there is any), as well as the harmonization of the case-law of domestic courts with the case-law of the Constitutional Court.

Finally, attention is paid to mutual dialogue between the domestic supreme courts and the possibility of counteracting conflicting case-law of these courts.



## I CJEU

1. How is the case-law of the CJEU studied and observed at your Court? Do you have, e.g., a department for this purpose?

*Shortly after the establishment of the Supreme Administrative Court (SAC) in 2003, the European Law Department was created (even though it had not been prescribed by law). Afterwards, it was merged with the Department of Documentation of Case-law to form the Department of Documentation and Analytics.*

*Currently, the department has various tasks, one of which is to elaborate analyses at the request of judges of the SAC or regional courts (as the 1st instance administrative courts). Usually, these analyses consist of research into the CJEU case-law on a particular legal issue, typically when a request for a preliminary ruling is under consideration. This type of assignments is rather occasional, as it is up to the judges (who are expected to follow the latest case-law developments on their own) whether they use the department's help. In general, the department does not monitor EU regulations or case-law of the CJEU without relation to any particular assignment.*

1.1. If the answer to the previous question is affirmative, how many people are employed in that Department and what education have they completed? What is the role of the Department (e.g., advisory)?

*In total, the Department of Documentation and Analytics consists of 5 graduated lawyers. It is not headed by a judge, even though it used to be in the past. The head of the department is, however, reporting directly to the vice-president of the SAC.*

*The role of the department is advisory (see the answer to the question above).*

2. Is there a possibility of repealing a final ruling made in an administrative dispute if the CJEU adopts a ruling in another case indicating that an earlier final ruling of a domestic court is erroneous? If there is such a procedure, in what formation (number of judges) does the administrative court adopt its decisions?

*The Czech legislation does not provide for such a procedure.*

*Even otherwise, incorrect application of substantive law is not prescribed as a reason for the renewal of a dispute concluded by a final ruling. As was held, for example, by the Grand Chamber of the SAC in resolution of 21 October 2008, no. 8 As 47/2005-86 (no. 1764/2009 Coll. of the SAC), with references to the case-law of the Constitutional Court, the settled case-law of the highest courts constitutes a legal norm in its material dimension. Therefore, any change or refinement of that case-law can then be regarded in a functional sense as an amendment to a legal norm with the temporal effects that such an amendment traditionally has. A change or refinement of the case-law is thus not sufficient to justify the use of extraordinary remedies in cases concerning the same legal issue in which the final ruling has already been made.*

*If a party were to propose renewing the dispute for a legally prescribed reason [new evidence or facts have come to light – Art. 111 of the Code of Administrative Justice*



**Co-funded by  
the European Union**

*(No. 150/2002 Coll.)], the newer position of the CJEU would be applied in the renewed dispute. However, the possibility is very limited – a dispute may be renewed only in cases of actions against interference of administrative authorities (pursuant to Art. 82 et seq. thereof) and in cases of suspension or dissolution of political parties [Art. 114(1) thereof]. Such cases form a rather marginal agenda of administrative courts.*

2.1. Are the parties authorized to initiate the repealing of a final ruling in the aforementioned case? Apart from the parties, is any other body (authority etc.) involved in such a procedure? Is there a deadline for submitting such a request?

*As stated above, the Czech legislation does not provide for such a procedure.*

2.2. Is the administrative court authorized to react *ex officio* in the aforementioned case? Is there a prescribed deadline for such action?

*The administrative courts are not authorized to ex officio repeal a final ruling on the ground that it is contrary to a later position of the CJEU. The courts are not authorized to ex officio renew administrative disputes in general.*

2.3. In the case of conflict between a domestic court decision and a newer CJEU judgment, what kind of procedure is adopted for establishing that the earlier final ruling is not in accordance with the position of the CJEU? How are the positions of parties collected in such a procedure?

*As stated above, the Czech legislation does not provide for such a procedure.*

2.4 Is a legal remedy permitted against such a ruling?

- - -

2.5. If the aforementioned procedure exists, in approximately how many or what kinds of administrative disputes in the period 2012 - 2022 was the possibility of changing a final ruling that is not in accordance with the later position of the CJEU used?

- - -

3. Has the legislation been changed due to observed conflicts between the case-law of domestic courts and the case-law of the CJEU? In the affirmative, please provide an example!

*Yes. The most fitting example would be the case of „Slovak pensions“. The question was whether the Czech citizens, who – before the division of Czechoslovakia – used to work for Slovak employer and were thus entitled to a Slovak pension, should be entitled to a compensatory allowance by the Czech Republic in order to compensate the disparities in the amount of Czech and Slovak pensions (which started to arise as a result of the then deepening disparities between the Czech and Slovak pension insurance system).*



*The Constitutional Court has repeatedly held that only the Czech citizens are entitled to such an allowance, while the SAC considered such position as contrary to the EU law, in particular to the prohibition of discrimination on grounds of nationality. The differences amounted to the first and last open conflict between the SAC and the Constitutional Court. In response to the repeated overruling by the Constitutional Court, the SAC referred a request for a preliminary ruling to the CJEU, which sided with its position [judgment of 22 June 2011, Landtová (C-399/09)]. However, the Constitutional Court was not very eager to depart from its previous case-law and, in an unprecedented manner, declared the CJEU's judgment to be ultra vires. In the end, Ms Landtová's particular case was resolved by an out-of-court settlement between her and the Czech government.*

*To resolve the conflict, the Act on Pension Insurance (no. 155/1995 Coll.) was amended to ensure compliance with the position of the CJEU by replacing the citizenship as a requirement for granting the compensatory allowance by required length of insurance. As the explanatory memorandum to the amendment puts it: „It is evident that there is a problematic contradiction between the views of the Constitutional Court and the CJEU, which, if it would continue to deepen, could have negative consequences (...); this case also damages the position of the Czech Republic as a member of the EU.“*

## **II ECtHR**

1. How is the case-law of the ECtHR studied and observed at your Court? Do you have, e.g., a department for this purpose?

*See the answer to question no. 1 in Part I.*

*However, majority of analyses elaborated by the Department of Documentation and Analytics consists of research into case-law of the CJEU, as it is generally more relevant to administrative courts in particular (taxes, international protection & migration, etc.). ECtHR case law search tasks typically relate to asylum, immigration and misdemeanour cases.*

1.1. If the answer to the previous question is affirmative, how many people are employed in that Department and what education have they completed? What is the role of the Department (e.g., advisory)?

*See the answer to question no. 1.1 in Part I.*

*In the context of monitoring the case-law of the ECtHR, it is worth mentioning that the Department of Documentation and Analytics cooperates on a regular basis with the Office of the Government Agent, who represents the Czech Republic before the ECtHR. Part of the cooperation is periodic drafting of summaries of selected ECtHR's judgments (typically, for the SAC, in the field of administrative law. These summaries are then published in the Czech database of the case-law of the ECtHR (<http://eslp.justice.cz/>))*



**Co-funded by  
the European Union**

*and some of them also in the newsletter of the Office. Other similar departments of the Supreme Court, the Constitutional Court and the Office of Ombudsman are also involved.*

*In addition, a representative of the department attends meetings of the College of Experts on the enforcement of ECtHR rulings and the implementation of the Convention (see the answer to question no. 6 below).*

2. What is the hierarchical status of the Convention in the legal order of your member state?

*According to Art. 10 of the Constitution, promulgated international treaties to the ratification of which Parliament has given its consent and by which the Czech Republic is bound form part of the legal order; if an international treaty provides otherwise than is provided for by a statute, the treaty shall apply. Therefore, international treaties generally have priority of application.*

*However, as was held by the Constitutional Court in ruling of 25 June 2002, no. Pl. ÚS 36/01, in relation to constitutional amendments concerning the accession of the Czech Republic to the EU and international treaties, the Convention – as well as other treaties on human rights – form a part of the constitutional order within the meaning of Art. 112(1) of the Constitution, even though not explicitly listed therein. Therefore, the Convention and such treaties have the same hierarchical status in the Czech legal order as the Constitution and Charter of Fundamental Rights and Freedoms.*

2.1. How does this status affect the application of the Convention in administrative disputes (is the Convention applied directly)?

*Courts apply the Convention directly.*

2.2. Is there a specific body (court) that controls the application of the Convention in administrative disputes?

*There is no specific body (court). According to Art. 4 of the Constitution, all the courts are tasked to protect fundamental rights and freedoms. The application of the Convention is thus – in general – controlled within the system of "ordinary courts" through standard judicial remedies, with the possibility to challenge their final rulings before the Constitutional Court as the protector of Constitutionality (Art. 83 thereof).*

3. According to the domestic law (or case-law), is a violation of Convention or a deviation from the ECtHR case-law, determined by a domestic court (e. g., court of appeal), a possible reason for repealing the ruling of a lower court that committed the violation? If the answer is affirmative, which legal remedies or instruments are available and what is the procedure like?

*The Czech Republic has a two-tier administrative justice system. In the 1st instance, the vast majority of cases are handled by the (administrative divisions of) regional courts, while the SAC addresses extraordinary remedies – the so-called cassation complaints. Incorrect application of substantive law, including the Convention (and its*



**Co-funded by  
the European Union**



*interpretation in the case-law of the ECtHR), and procedural faults giving rise to a violation of the right to a fair trial (Art. 6 of the Convention as interpreted by the ECtHR) constitute possible reasons for challenging rulings of the regional courts before the SAC and for repealing them. As indicated above, the rulings of the SAC on cassation complaints may then be challenged before the Constitutional Court.*

4. What are the procedural possibilities of a party whose administrative dispute has been concluded, and in relation to which the ECtHR found that a violation of the Convention has been committed?

*According to Art. 119(1) of the Act on the Constitutional Court (no. 182/1993 Coll.), if an international court (typically, ECtHR) finds a violation of human rights or fundamental freedoms in a case previously ruled on by the Constitutional Court, it is a ground for renewal of the case before the Constitutional Court. In this context, it is worth mentioning that the Constitutional Court has eventually come to a conclusion that the decision of the ECtHR to strike an application out of its list of cases under Art. 37(1)(c) of the Convention on a basis of a declaration by the State recognising a violation of the Convention by the State with an offer of financial compensation does not constitute a ground for renewal under Art. 119(1) [ruling of 26 April 2022, no. Pl.ÚS 8/22, by which the Constitutional Court overcame its previous case-law].*

*Anyone, who was a party to the proceedings before the Constitutional Court in the case and in whose favour the ruling of the international court is, may apply for the renewal [Art. 119(2)]. However, the application is inadmissible if the consequences of the violation have ceased to persist and have been sufficiently remedied by the provision of just satisfaction in accordance with the decision of an international court, or if the remedy has otherwise been provided; this does not apply if the public interest in renewal of the case substantially exceeds the applicant's own interest (Art. 119a).*

4.1. Must the party react within a prescribed deadline?

*The party may apply for renewal within six months of the date on which the ruling of the international court became final [Art. 119(3) of the Act on the Constitutional Court, which explicitly refers to Art. 44 of the Convention].*

4.2. If the party has not submitted a request to change the final ruling (that is, for example, to renew the dispute), is the administrative court authorized to react *ex officio*?

*As stated above (in answer to question 2.2 in Part I), the courts are not authorized to *ex officio* renew administrative disputes.*

4.3. In what formation (number of judges) does the administrative court adopt its decisions on amending the final ruling?

*If its own ruling is in contrary to a ruling of an international court in the same case, the Constitutional Court shall repeal it [Art. 119b(1) of the Act on the Constitutional Court]. Then, the Constitutional Court shall decide the case anew, basing its decision on the*



*legal position of the international court [Art. 119b(2) and (3) thereof]. Interestingly, the Constitutional Court decides in plenary session (full court).*

*If the Constitutional Court rules – in the renewed proceedings – that human rights or fundamental freedoms of the applicant have been violated, it shall repeal the rulings of the lower courts (the SAC and a regional court as the 1st instance administrative court). However, if the violation occurred only in the proceedings before the SAC, only the ruling of the SAC would be repealed. Both of the courts decide in a regular formation – either a single judge or a three-member panel at the regional court (depending on a type of the case) and a three-member panel at the SAC.*

4.4. In the case of conflict between a domestic court decision and a newer ECtHR judgment, what kind of procedure is adopted for establishing that the earlier final ruling is not in accordance with the position of the ECtHR? Is there a special procedure adopted establishing that the earlier final ruling is not in accordance with the position of the ECtHR? Are the parties from other administrative disputes authorized to request the change of their final rulings based on the decision of the ECtHR made in another case? Is there a deadline for submitting such a request? How are the positions of parties collected in such a procedure? Is a legal remedy permitted against a ruling of the domestic court deciding the case?

*As indicated above, only the parties to a particular case may apply for the renewal of proceedings before the Constitutional Court (which may result in repeal of final rulings of administrative courts) in the case. Otherwise, there is no procedure for establishing that an earlier final ruling is contrary to the position of the ECtHR. The parties from other administrative disputes are not authorized to request the change of their final rulings based on the decision of the ECtHR made in another case.*

4.5. In approximately how many or what kinds of administrative disputes in the period 2012 - 2022 was a request for changing the final ruling submitted due to it being conflicting with the position of the ECtHR?

*In the period of 2012 – 2022, the Constitutional Court has decided on tens of applications to renew the proceedings. However, only 2 of them concerned administrative disputes previously decided by administrative courts:*

- ***Delta Pekárny v. the Czech Republic (judgment of 2 October 2014, application no. 97/11).***

*In this case, the Constitutional Court dismissed the application for renewal on grounds that the insufficient procedural safeguards for judicial review of the exercise of the powers of the Office for Protection of Competition concerning the assessment of the adequacy, duration and scope of a dawn raid (an investigation carried out at the company's business premises) have already been remedied by another ruling closely connected to the case which concerned an imposition of a fine to the company on the basis of the results of the dawn raid. In that ruling, the Constitutional Court also reflected the considerations of the ECtHR which led to a finding of violation of Art. 8 of the Convention, and repealed the rulings of the administrative courts in that case. Thus, a way has been opened for a new and comprehensive assessment of the dawn raid (by a regional court as the 1st instance administrative court, which*



**Co-funded by  
the European Union**

could take evidence, with possibility to challenge its decision before the SAC). In such a situation, the Constitutional Court held that the procedural safeguards for judicial review were sufficient, as the adequacy, duration and scope of the dawn raid could be (and have already been) subject to judicial review. The remedy foreseen for by the Act on the Constitutional Court was therefore provided in a different way (in a different proceeding).

- **Beránek v. the Czech Republic (judgment of 5 October 2017, application no. 45758/14).**

In this case, the ECtHR found a violation of Art. 6 of the Convention on a ground that incorrect application of the time limit for submitting a constitutional complaint prevented the applicant's complaint from being considered on its merits and thus violated his right of access to justice, thus to effective judicial protection [cf. the essentially same case of Zemanová v. the Czech Republic (judgment of 13 December 2005, application no. 6019/03)].

The Constitutional Court granted the renewal and then considered the case on its merits (a refusal of building authorities to grant permission for the construction of mobile stalls for the purpose of stabling horses, upheld by the administrative courts). Eventually, however, the complaint was dismissed as manifestly unfounded.

A low figure of renewed administrative disputes before the Constitutional Court relates to the fact that only an average of 11 % of constitutional complaints (which are the most common applications submitted to the Constitutional Court – approximately 4 000 per year) concern administrative law matters.

5. In what types of administrative disputes are violations of Convention rights most often established? Can you provide a reason therefor?

In 2022, for example, the ECtHR ruled on 29 applications against the Czech Republic (which is relatively high number compared to an average of 10 decisions per year in the previous years); violation of the Convention was found only in 4 cases.

The case which should be mentioned is *Komissarov v. the Czech Republic* (judgment of 3 February 2022, application no. 20611/17), in which the ECtHR found a violation of Art. 5(1)(f) of the Convention. In the same year, the application in case of *Kudashkin* was also submitted (no. 11062/22) and then struck out of list of cases on the basis of an out-of-court settlement. Even though both applications challenged decisions of criminal courts, they were closely intertwined with decisions of administrative courts in asylum proceedings. Both cases involved Russian citizens who were to be extradited to Russia and were in extradition custody. However, they also applied for international protection – which is, generally, a reason (temporarily) impeding the realization of extradition [Art. 3d of the Asylum Act (no. 325/1999 Coll.)]. Thus, the extraditing authorities must await the final decision of the Ministry of Interior or the administrative courts on the application. Even though the Asylum Act [Art. 27(7) and Art. 32(4)] sets short time limits for decisions of the Ministry of Interior (formerly 60 days, now 90) and both regional courts and the SAC (60 days), in order to reduce the duration of extradition custody, the proceedings may be prolonged due to repeal of the decision of the Ministry of Interior by the courts or the ruling of the regional court by the SAC, which entails referring the



**Co-funded by  
the European Union**



case back for a new decision. In addition, the courts often lack the information necessary to determine that the time limits apply in the case (i. e., that the applicant is in extradition custody, ready to be extradited upon decision rejecting to grant him/her international protection), therefore – in some cases – exceed them, even despite giving all asylum cases a general priority [as required by Art. 56(3) of the Code of Administrative Justice]. The criminal courts are thus forced to prolong the duration of the custody, waiting for a final decision on the application. In the abovementioned cases, as a result, both the applicants – Komissarov and Kudashkin – have eventually spent inadequate time in custody (the former 18 months, the latter 28 months).

Otherwise, it cannot be determined in what types of administrative disputes are violations of Convention most often established. No special statistics are kept on such violations. Nevertheless, the 29 applications ruled on in 2022 and another 19 applications submitted to the ECtHR in the same year covered a wide range of legal issues and rights/freedoms protected by the Convention and its Protocols, and only a fraction of them somehow concerned cases decided by the administrative courts, as in previous years.

6. Is there a special body in your country responsible for the execution of ECtHR rulings (apart from the Government as regards just satisfaction afforded in judgments by the ECtHR) and what is its name? If there is such body, what is its composition and its powers (which instruments does it apply to prevent case-law of domestic courts from conflicting with the case-law of the ECtHR)?

The abovementioned Office of Government Agent has been established as an institution not only for representing the Czech government before the ECtHR, but also for identification of measures for the execution of particular judgments and supervision of their implementation. The Office composes of the Agent, his deputy and several other graduated lawyers. Its powers are rather informal. However, public authorities in general shall provide the Office with information and other assistance [as required by the Act on the Provision of Assistance for the Purposes of Proceedings before Certain International Courts (no. 186/2011 Coll.)].

Since 2015, the Office also organizes an annual meeting of the "College of Experts on the enforcement of ECtHR rulings and the implementation of the Convention", which is designed as an advisory body. It is composed of representatives of ministries, the Chamber of Deputies, the Senate, the Constitutional Court, the supreme courts, State Prosecutor's Office, the Ombudsman, law faculties, civil society organizations, etc.). During the meeting, the Office presents its efforts (results of negotiations with ministries or representative of other relevant institutions, draft laws, etc.) and outlines the steps to be taken to execute/implement ECtHR judgments – and decisions of some other international bodies (such as the UN Committee on the Rights of the Child or the European Committee of Social Rights) – against the Czech Republic. The next course is designed more as a discussion on which further steps should be taken and what should individual institutions do within their competences in order to not repeat the same violation of the Convention in future similar cases.

For example, the case of Komissarov (mentioned above) has been on the agenda of the past couple of meetings. One of the measures discussed and subsequently adopted



**Co-funded by  
the European Union**

*in practice was the introduction of a special file mark for asylum cases which are conducted in parallel with extradition proceedings to indicate that short time limits for administrative court decisions apply.*

7. Has the legislation been changed due to observed conflicts between the case-law of domestic courts and the case-law of the ECtHR? Please, provide an example!

*Virtually every ECtHR judgment establishing a violation of Convention that points to a more general, systemic problem requires implementation entailing legislative change, or, at least, a change of administrative/judicial practice (by guidelines, rulings of the Constitutional Court or of the supreme courts overcoming previous case-law, etc.), in contrast with mere "excesses" in individual cases, requiring only a one-off remedy in form of a just satisfaction.*

*To provide an example, as a result of repeated judgments of the ECtHR establishing a violation of Art. 6(1) and Art. 13 of the Convention consisting of undue delays in court proceedings and the absence of effective remedy of such delays, the Act on Liability for Damage Caused in the Exercise of Public Authority by an Unlawful Decision or Misadministration (no. 82/1998 Coll.) has been amended [see, for example, the case of Hartman v. the Czech Republic (judgment of 10 July 2003, application no. 53341/99), which is mentioned in the explanatory memorandum to the amendment] to explicitly provide that failure to issue a decision in a time limit provided for by law or otherwise in "reasonable" time limit is considered as misadministration [Art. 13(1)], and that regardless of whether a (material) damage has been caused by such misadministration, immaterial damage caused to the parties shall be compensated by providing a just satisfaction [Art. 31a(1)]. Such satisfaction shall be monetary, if the immaterial damage cannot be compensated in any other way and the mere declaration of a violation would not be sufficient [Art. 31a(2)]. The Act also explicitly mentions the aspects of the case to be considered, derived from the case-law of the ECtHR (e. g., the overall length and complexity of the proceedings, etc.), when awarding the justification for undue delays [Art. 31a(3)]. It should be added, however, that the Supreme Court, which has the supreme jurisdiction in cases concerning damage caused by public authorities (which are considered as civil law matters in the Czech Republic), relied on the relevant case-law of the ECtHR even before the amendment.*

*In context of the very same ECtHR judgments, the Act on Courts and Judges (no. 6/2002 Coll.) has also been amended to provide a new type of protection against undue delays – an application for determination of a time-limit for the performance of a procedural act in a court proceedings (e. g., for scheduling of a hearing, issuing a decision, etc.), which may be submitted by a party to the proceedings to the superior court [Art. 174a].*

*From the recent years, the case of Grosam v. the Czech Republic (judgment of 23 June 2022, application no. 19750/13) should also be mentioned. In this case, the First Section of the ECtHR came to a conclusion that disciplinary chambers of the SAC dealing with disciplinary actions against enforcement officers do not satisfy the requirements of an independent and impartial tribunal under Art. 6(1) of the Convention, in particular due to their composition and the selection and appointment procedure of their members. Previously, the 2009 reform of disciplinary proceedings with judges, prosecutors and*



**Co-funded by  
the European Union**

*enforcement was subject of review by the Constitutional Court, which did not find any reason to repeal it (ruling of 29 September 2010, no. Pl. ÚS 33/09), and followed this position ever since. Even though the Grand Chamber of the ECtHR (by its judgment of 1 June 2023) eventually overturned the judgment of the First Section, the Ministry of Justice had already begun works on the reform of disciplinary procedure not only with enforcement officers, but also with judges and prosecutors (which is essentially the same). The draft of the amending law, which addresses several key issues highlighted in the First Section's judgment, is in the inter-ministerial comment procedure.*

8. Has your country ratified Protocol No. 16 to the Convention (which provides for the possibility of seeking advisory opinions)?

*The Czech Republic has not yet ratified Protocol No. 16 to the Convention.*

8.1. Do you believe that an advisory opinion could prevent the adoption of a ruling by a domestic court that would not be in accordance with ECtHR case-law? Explain your answer.

*An advisory opinion of the Grand Chamber, even though not binding, envisages the future position of the ECtHR on legal issues, and could certainly prevent the adoption of domestic rulings which would later be found as contrary to the Convention. However, the mechanism of advisory opinions must be as functional as to not prolong the proceedings before the domestic courts by years of waiting for the opinion, since one of the main advantages of the mechanism is avoiding years of further proceedings (before the Constitutional Court and then before the ECtHR). And – as reiterated by the ECtHR in its case-law – "justice delayed is justice denied".*

8.2. Do you have practical experience with seeking an advisory opinion provided for in Protocol No. 16 to the Convention? Provide an example.

*No, because as stated above, the Protocol has not yet been ratified.*

### **III CONSTITUTIONAL COURT**

1. Is there a Constitutional Court in your country?

*Yes.*

1.2. If the answer to the question is affirmative, what are the powers of the Constitutional Court?

*According to Art. 87 of the Czech Constitution, the Constitutional Court decides:*

- a) on the repeal of statutes or individual provisions thereof if they are contrary to the constitutional order;*
- b) on the repeal of other legislation or individual provisions thereof if they are contrary to the constitutional order or a statute;*



**Co-funded by  
the European Union**

- c) on constitutional complaints against final decisions or other interferences by public authorities infringing constitutionally guaranteed fundamental rights and freedoms;
- d) on constitutional complaints by the territorial self-governing authorities against unlawful interferences by the state (the "communal constitutional complaints");
- e) competence disputes between the state and territorial self-governing authorities, unless that power is conferred by law on another body;
- f) on appeals against decisions on verification of the election of deputies or senators;
- g) in doubts as to loss of eligibility and incompatibility to hold the office of a deputy or a senator (pursuant to Art. 25);
- h) on a constitutional action brought by the Senate against the President of the Republic [under Art. 65(2)];
- i) on an action brought by the President of the Republic to revoke a resolution of the Chamber of Deputies and the Senate that the President is for serious reasons incapable of performing his/her duties (pursuant to Art. 66);
- j) on the measures necessary to implement a decision of an international tribunal which is binding on the Czech Republic, in the event that it cannot be implemented otherwise;
- k) whether a decision to dissolve a political party or other decisions relating to the activities of a political party is in conformity with constitutional or other laws.

*Prior to the ratification of treaties under Art. 10a or Art. 49 of the Constitution, the Constitutional Court shall have jurisdiction to decide concerning the treaty's conformity with the constitutional order. Until then, a treaty cannot be ratified.*

2. Does the supreme administrative jurisdiction have powers similar to those of the Constitutional Court? Please describe the competence/jurisdiction of these two jurisdictions!

*The Constitution even provides that some powers of the Constitutional Court may be conferred on the SAC. According to Art. 87(3) of the Constitution, a law may provide that, instead of the Constitutional Court, the SAC shall have jurisdiction:*

- a) to repeal other legislation than statutes or individual provisions thereof if they are contrary to a statute, or
- b) to decide competence disputes between the state and territorial self-governing authorities.

*Pursuant to this Article, the legislator conferred the power to decide on competence disputes on the SAC [Art. 4(1)(d) and Art. 97 et seq. of the Code of Administrative Justice]. The SAC has jurisdiction to decide on such disputes not only between state and territorial self-governing authorities, but also other self-governing authorities (e. g., professional associations), disputes between self-governing authorities themselves and disputes between central administrative authorities themselves.*

*On the contrary, the power to repeal legislation has not been conferred on the SAC. However, It is worth mentioning that, since the adoption of the new Civil Service Act (no. 234/2014 Coll.), the Municipal Court in Prague has the power to repeal the so-called*



**Co-funded by  
the European Union**



*service regulations issued under the Act (Art. 101e of the Code of Administrative Justice). Such regulations are, nevertheless, considered as internal acts, not as "legislation" within the meaning of Art. 87 of the Constitution.*

3. In the event that the supreme administrative jurisdiction deems that a provision of the law to be applied in a specific case is unconstitutional, must it initiate appropriate proceedings before the Constitutional Court, or is it authorized to interpret the contested provision taking the Constitution into consideration?

*The answer depends on whether a statutory provision or a provision of other (subordinate) legislation is deemed to be unconstitutional.*

*According to Art. 95(1) of the Constitution, judges are bound by statutes and treaties which form a part of the legal order; they are authorized to assess conformity of other legislation with statutes or with such treaties. Therefore, if any court deems a provision of other legislation than statutes to be unlawful (contrary to statutes or binding treaties), thus unconstitutional (as follows from one of the core principles of rule of law), it simply shall not apply that provision in the case. Instead, the court shall apply the law directly.*

*On the contrary, according to Art. 95(2) thereof, should a court deem that a statutory provision to be applied in resolving a case is contrary to the constitutional order, it shall stay the proceedings and refer the case to the Constitutional Court. However, the Constitutional Court reiterates that there is no reason to repeal a statutory provision, the conformity of which with the constitutional order is in question, if it may be interpreted in a constitutionally conforming manner (e. g., resolution of 18 December 2012, no. Pl. ÚS 37/10). Therefore, the „ordinary courts“ must – before referring the case to the Constitutional Court – try to interpret the provision in such a manner and may refer the case for repeal of the provision only when its constitutionally conforming interpretation is not possible.*

4. What are the possibilities of the parties in an administrative dispute to request the repeal of the final rulings that were made on the basis of a regulation that the Constitutional Court found unconstitutional (in the process of abstract review of constitutionality)? Is there a prescribed deadline for such action?

*According to Art. 71(1) of the Act on the Constitutional Court, if a judgment has been made by a court in criminal proceedings, which has become final but has not yet been enforced, based on a provision which has been repealed by the Constitutional Court, the repeal of that provision is a ground for renewal of the case. Other final decisions made on the basis of the repealed provision remain unaffected; however, the rights and obligations under such decisions may not be enforced [Art. 71(2) thereof]. Otherwise, the rights and obligations arising from legal relations prior to the repeal of the legislation remain unaffected [Art. 71(4) thereof].*

*Therefore, the declared unconstitutionality of a provision applied in an administrative dispute is not – in contrast with criminal proceedings – a ground for renewal, even when it comes to administrative offences [in its judgment of 24 November 2020, no. 2 As 277/2020-32, the SAC held that decisions on such offences cannot be considered as "judgments in criminal proceedings", thus refusing an extensive interpretation of Art. 71(1) of the Act on the Constitutional Court]. Thus, it is not possible for the parties in the dispute to request the repeal of final decisions made on the basis of unconstitutional*





*provisions. Nevertheless, such decisions may not be enforced. In this respect, the SAC has already held (e. g., in judgment of 17 October 2019, no. 8 Afs 7/2018-38) that such effect arises automatically – no procedure resulting in declaration of unenforceability of the decision in question is required. In addition, according to the case-law of the Constitutional Court (e. g., ruling of 30 January 1997, no. I. ÚS 223/95), enforcement of such unenforceable decisions would constitute an infringement of fundamental rights.*

*However, not every repeal of a provision renders a final decision which was made on the basis of that provision unenforceable. Generally, only a repeal of a substantive provision may render the decision unenforceable. And even then, the authorities shall assess the effects of the repeal on individual acts. For example, when the Constitutional Court repeals the lower limit of a fine which shall be imposed for a certain administrative offence, it does not automatically render a final decision by which a fine for such offence was imposed unenforceable, provided that the fine in question was justified and imposed at the very upper limit (judgment of the SAC of 31 December 2004, no. 6 A 19/2002-38). In other words, if the administrative authority justifies the imposition of a sanction at the lower limit of the statutory rate precisely by the obligation to impose a sanction at least at the minimum lower limit, which is then declared unconstitutional, the decision will be unconstitutional. However, if the imposition of the sanction was justified regardless of the lower limit, the declaration of the unconstitutionality of the lower limit will not affect the constitutionality of the decision and, therefore, its enforceability (judgment of the SAC no. 8 Afs 7/2018-38, cited above).*

5. What are the possibilities of the parties in an administrative dispute to request the repeal of the final rulings that are not in accordance with the ruling of the Constitutional Court made in the constitutional action of another person? Is there a prescribed deadline for such action?

*The law does not provide for any such possibility.*

#### **IV RELATIONSHIP OF THE DOMESTIC SUPREME ADMINISTRATIVE JURISDICTION WITH ANOTHER DOMESTIC SUPREME COURT**

1. Is there another supreme jurisdiction in your system?

*Yes, the Supreme Court (SC).*

2. Please describe the competence/jurisdiction of the two supreme jurisdictions.

*The SC has a supreme jurisdiction in civil and criminal law matters, the SAC has a supreme jurisdiction in administrative law matters.*

*In this context, it is worth mentioning that in 2003, together with the SAC as well as the administrative justice system in general, a special competence chamber was established by Act on Resolving Certain Competence Disputes (No. 131/2002 Coll.)). The special chamber comprises of 3 judges of the SAC and 3 judges of the SC, and its task is to decide which courts (administrative or civil) have the jurisdiction in cases in which such competence disputes arose.*



**Co-funded by  
the European Union**

3. In general, how is the conflict of different rulings of domestic courts counteracted in your legal system? How is a possible conflict of positions between the (two supreme) jurisdictions counteracted?

*The competence disputes are resolved by the special competence chamber (see the answer to the previous question).*

*Otherwise, there is little room for possible conflicts, as the SAC and the SC have supreme jurisdiction in different matters. Although there are apparent overlaps (e. g., administrative offences and criminal law, taxes and business law, construction/land-use and civil law, and – generally – the same or similar procedural rules) which may lead to, for example, a different interpretation of the same concepts in the case-law of both supreme courts, such differences are usually justified by the generally distinctive nature of administrative law from civil or criminal law (rules, principles, systematics, etc.). In general, the SAC takes notes of the relevant case-law of the SC and refers to it either to support its own reasoning, or to justify why the case-law is not (fully) applicable in the administrative dispute in question or generally in administrative law matters.*

*To give an example, the SAC recently held [in its judgment of 20 July 2022, no. 10 Ads 262/2020-98 (no. 4402/2022 Coll. of the SAC)] as inapplicable the case-law of the SC on the concurrent exercise of functions (CEOs and – at the same time – members of the statutory bodies of private companies), when considering an interpretation of the term "employee" for the purposes of protection of employees in the event of the insolvency of their employer (Directive 2008/94/EC; Act. no. 118/2000 Coll.). In another recent judgment [of 26 May 2022, no. 4 Afs 264/2018-85 (no. 4367/2022 Coll. of the SAC)], the Grand Chamber of the SAC followed the case-law of the SC in addressing the question of when a fiction of delivery arises if a document in the tax proceedings is delivered electronically to a data box, as the SC has already dealt with the same question in relation to other proceedings (civil, criminal).*

4. In your opinion, is conflict prevention possible?

*Conflicts may be prevented by "superior" case-law of the Constitutional Court, the CJEU and the ECtHR (however, if that case-law is too ambiguous, it can rather lead to conflicts instead of preventing them). For example, in the first case mentioned in the answer to the previous question, the SAC requested and then relied on a preliminary ruling of the CJEU [judgment of 5 May 2022, HJ (C-101/21)], which also dealt with the issue of compatibility of the national case-law (of the SC) with the Directive 2008/94/EC.*

*However, the informal dialogue and reciprocal respect between the supreme courts is equally important. As the Grand Chamber of the SAC repeated from its previous case-law in the second case mentioned in the answer above, if a question of law is subject of interpretation within the jurisdiction of both supreme courts, so that an interpretative conflict which cannot be simply resolved by the existing mechanisms for unifying case-law may arise, "it is in the interest of preserving the unity and predictability of judicial decision-making, legal certainty and the authority of the judiciary, that both of the courts exercise maximum restraint and strive to avoid conflicts".*



**Co-funded by  
the European Union**